

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACE & COMPANY, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00-667-SLR
)	
BICC CABLES CORP.,)	
)	
Defendant.)	

MEMORANDUM ORDER

At Wilmington this 13th day of August, 2002, having reviewed the motion to amend filed by plaintiff Ace & Company, Inc., and the papers submitted in connection therewith;

IT IS ORDERED that said motion (D.I. 38) is denied, for the reasons that follow:

1. Federal Rule of Civil Procedure 15(a) provides that "leave [to amend] shall be freely given when justice so requires." Nevertheless, denial of leave to amend has been found justified by the United States Court of Appeals for the Third Circuit on grounds of "undue delay, bad faith, dilatory motive, prejudice, and futility." In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997). "'Futility' means that the complaint, as amended, would fail to state a claim upon which relief could be granted." Id. Therefore, accepting as true the facts alleged in plaintiff's proposed amended complaint

and drawing all reasonable inferences in plaintiff's favor, the court must determine whether any relief could be granted under any set of facts consistent with the allegations of the complaint.

2. Plaintiff asserts that its motion to amend the complaint to add Balfour Beatty, Inc. ("BBI") as a defendant should be granted, based on BBI's status as the sole shareholder of defendant BICC Cables Corporation ("BICC") and on the fact that "BBI authorized and consented to the sale of the business and assets of BICC to General Cable Corporation." (D.I. 38 at 1-2) Plaintiff claims in this litigation that, in the context of the General Cable sale, it was injured by BICC's alleged breach of contract and breach of the implied covenant of good faith and fair dealing. Plaintiff refers to the "Action by Written Consent of the Sole Shareholder of BICC Cables Corporation" in arguing that "BBI in its role as sole shareholder of BICC displayed sufficient control and dominion over the actions of BICC to make it liable for BICC's" conduct. (D.I. 38 at 2; D.I. 45, Ex. 2)

3. It is settled law that a parent's status as a 100% owner of the shares of its direct subsidiary, standing alone, cannot establish a principal-agent relationship. See Phoenix Canada Oil Company Ltd. v. Texaco, Inc., 842 F.2d 1466, 1477 (3d Cir. 1988); Mobil Oil Corp. v. Linear Films, Inc., 718 F.Supp. 260, 266-71 (D. Del. 1989). In order to establish liability of a

parent company for the actions of its subsidiary, it must be demonstrated "[n]ot only [that] an arrangement exist[s] between the two corporations so that one acts on behalf of the other and within usual agency principles, but the arrangement must be relevant to the plaintiff's claim of wrongdoing." Phoenix, 842 F.2d at 1477. Therefore, the parent must be shown to have exerted control over the subsidiary in connection with the very conduct at issue in the lawsuit in order to find the parent liable for such conduct.

4. Plaintiff asserts in this regard that the resolution by BBI's directors authorizing the sale of BICC's "business, including substantially all assets and liabilities relating thereto, to General Cable Corporation" (D.I. 45, Ex. 2) is sufficient indicia of control to state a claim upon which relief could be granted under Fed.R.Civ.P. 12(b)(6). The court disagrees. Such a resolution is required to be adopted pursuant to 8 Del.C. § 271.¹ Although discovery is not complete, substantial discovery has been undertaken. Aside from BBI's status as sole shareholder of BICC, there is no indication that BBI played any role in the transaction at issue. Indeed, the record made in connection with the prior motion practice

¹Section 271 provides that "[e]very corporation may . . . sell, lease or exchange all or substantially all of its property and assets . . . when and as authorized by a resolution adopted by the holders of the majority of the outstanding stock of the corporation entitled to vote thereon."

demonstrates the contrary, that Balfour Beatty plc, the ultimate parent and head of the Balfour Beatty family of international corporations (which includes both BBI and BICC), negotiated with General Cable and consummated the sale at issue.

5. Under these circumstances, the court finds that plaintiff's attempt to add BBI as a party defendant would be futile. Therefore, plaintiff's motion to amend is denied.²

Sue L. Robinson
United States District Judge

²Defendant's motion to strike (D.I. 48) is denied. The court has reviewed all of the papers submitted in connection with this dispute.